

Public consultation on the review of the alternative investment fund managers directive (AIFMD)

Fields marked with * are mandatory.

Introduction

The **short version** of this consultation will soon also be available in **23 European Union official languages**.

If you wish to respond in one of these languages, please wait until then to provide your replies.

In the European Union, alternative investment funds (AIFs) are collective investment funds that are not covered by [Directive 2009/65/EC on undertakings for collective investment in transferable securities \(UCITS\)](#). AIFs vary in terms of their investment strategies, markets, asset types and legal forms. Alternative investment fund managers (AIFMs) manage the AIFs, which are often established for saving or income generating purposes while supporting broader economic activity, and include venture capital and private equity funds, real estate funds, hedge funds and fund of funds. The activities of AIFMs are governed by the [alternative investment fund managers Directive 2011/61/EU \(AIFMD\)](#).

The AIFMD aims to facilitate greater AIF market integration, improve coherence in the actions taken by supervisory authorities to address potential risks posed to the financial system while ensuring appropriate levels of investor protection. To this end, an AIFM is required to obtain licence from its home supervisor and adhere to the operational requirements laid down in the AIFMD and its supplementing [AIFMR](#), including taking measures to manage risks and to ensure the requisite transparency regarding the activities of their managed AIFs.

On 10 June 2020, the European Commission submitted its [report to the European Parliament and the Council on the scope and the application of the AIFMD](#). The report concludes that while the AIFMD has contributed to the creation of the EU AIF market, provided a high-level protection to investors and facilitated monitoring of risks to financial stability, there are a number of areas where the legal framework could be improved. Given the European Commission's ongoing efforts to develop the capital markets union (CMU), this consultation seeks the views of stakeholders on how to achieve a more effective and efficient functioning of the EU AIF market as part of the overall financial system.

Structure of the public consultation

First, this public consultation focuses on improving the utility of the AIFM passport and the overall competitiveness of the EU AIF industry. The analysed data indicates that the appropriate and balanced regulation of financial markets benefits investors as well as the overall economy. The questions in the section on **authorisation/scope** seek views from stakeholders on the scope of the AIFM licence, its potential extension to smaller AIFMs and level playing field

concerns in relation to the regulation of other financial intermediaries, like MiFID firms, credit institutions or UCITS managers that provide similar services.

The **investor protection** section raises questions on investor access that take into account the differences between retail and professional investors. The same consideration is raised in the questions on a potential EU law pre-calibration of an AIF that would be suitable for marketing to retail. Adequacy of disclosure requirements are covered including the specific requirements that could be added, changed or removed from the current rulebook. Other questions address the alleged ambiguities in the depositary regime and the lack of the depositary passport. Stakeholders are also invited to comment on potential improvements to the AIFMD rules on valuation.

The issue of a level playing field is also covered in the section dedicated to **international issues**. Views are sought on how best to achieve the equitable treatment of non-EU AIFs and securing a wider choice of AIFs for investors while at the same time ensuring that EU AIFMs are not exposed to unfair competition or are otherwise disadvantaged.

The section dedicated to **financial stability** seeks stakeholder views on how to ensure NCAs and AIFMs have the tools necessary to effectively mitigate and deal with systemic risks. Specific input regarding improvements to the supervisory reporting template provided in the AIFMR is requested with a particular focus on the increased activities of AIFs in the credit market. The consultation suggests the potential for more centralised supervisory reporting and improved information sharing among the relevant supervisors. A revised supervisory setup and cooperation measures among the competent authorities are another focus of this consultation.

The rules on **investment in private companies** are examined with a view to potential improvements and comments are sought on the effectiveness of the current rules and their potential enhancement.

The **sustainability** related section seeks input on how the alternative investment sector can participate effectively in the areas of responsible investing and the preservation of our planet.

Questions are posed as regards the treatment of **UCITS**, particularly where a more coherent approach may be warranted. This includes the question of a single licence for AIF and UCITS managers, harmonised metrics for leverage calculation and reporting on the use of liquidity management tools.

Finally, stakeholders are welcome to raise other AIFMD related issues and submit proposals on how to otherwise improve the AIFMD legal framework with regard to any issues not directly addressed in the consultation.

Given the broad nature of the questions, well-substantiated, evidence/data backed answers and proposals will be particularly instructive. Clearly linking responses to the contributions already received in the [public consultation reviewing MiFID II](#), informing digital strategy of the EU or any other relevant consultations would be particularly useful.

This public consultation aims to gather views from all interested parties, in particular collective investment fund managers and investment firms, AIF distributors, industry representatives, investors and investor protection associations. The questions 1, 2 and 3 as well as the section Investor protection, except for part (b) thereof, are available in all the EU official languages to gather citizens' views on these matters.

The consultation will be open for fourteen weeks.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-aifmd-review@ec.europa.eu.

More information on

- [this consultation](#)

- [the consultation document](#)
- [the consultation strategy](#)
- [the acronyms used in this consultation](#)
- [investment funds](#)
- [the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish

Swedish

* I am giving my contribution as

Academic/research institution

EU citizen

Public authority

Business association

Environmental organisation

Trade union

Company/business organisation

Non-EU citizen

Other

Consumer organisation

Non-governmental organisation (NGO)

* Please specify in which role you are giving your contribution:

* First name

* Surname

* Email (this won't be published)

* Scope

International

Local

National

Regional

* Organisation name

255 character(s) maximum

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

Please add your country of origin, or that of your organisation.

- | | | | |
|---|--|-------------------------------------|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
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lands

Singapore

- Aruba
- Australia
- Austria
- Azerbaijan

- Bahamas
- Bahrain

- Bangladesh

- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan

- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina

- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei

- Faroe Islands
- Fiji
- Finland
- France

- French Guiana
- French Polynesia
- French Southern and Antarctic Lands

- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland

- Grenada
- Guadeloupe

- Guam

- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti

- Martinique
- Mauritania
- Mauritius
- Mayotte

- Mexico
- Micronesia

- Moldova

- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma

- Namibia
- Nauru

- Nepal

- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria

- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa

- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen

- Sweden
- Switzerland

- Syria

- Taiwan
- Tajikistan
- Tanzania
- Thailand

- The Gambia
- Timor-Leste

- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
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- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
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- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
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- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
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- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
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- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
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- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
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Côte d'Ivoire
Croatia

Kosovo
Kuwait

Réunion
Romania

Venezuela
Vietnam

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| <input type="radio"/> Cyprus | <input type="radio"/> Latvia | <input type="radio"/> Saint Barthélemy | <input type="radio"/> Yemen |
| <input type="radio"/> Czechia | <input type="radio"/> Lebanon | <input type="radio"/> Saint Helena Ascension and Tristan da Cunha | <input type="radio"/> Zambia |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho | <input type="radio"/> Saint Kitts and Nevis | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

* Field of activity or sector (if applicable):

at least 1 choice(s)

- Accounting**
- Auditing
- Banking**
- Credit rating agencies**
- Insurance**
- Pension provision**
- Investment management** (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation** (e.g. CCPs, CSDs, Stock exchanges)
- Social entrepreneurship**
- Other
- Not applicable

* Please specify your activity field(s) or sector(s):

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

Choose your questionnaire

Please indicate whether you wish to respond to the citizens' version (3 general questions and 14 investor protection questions) or full version (102 questions) of the questionnaire.

The short version only covers the general aspects of the AIFMD regime and investor protection matters under the AIFMD.

The full version contains 85 additional questions addressing more technical features of the AIFMD regulatory regime.

Note that only the questions that are part of the short version are also available in all EU languages.

- I want to respond only to the **short version of the questionnaire** (3 + 14 questions)
- I want to respond to the **full version of the questionnaire** (102 questions)

I. Functioning of the AIFMD regulatory framework, scope and authorisation requirements

The central pillar of the AIFMD regulatory regime is a European licence or a so-called AIFM passport. EU AIFMs are able to manage and market EU AIFs to professional investors across the Union with a single authorisation. This section

seeks to gather views on potential improvements to the AIFMD legal framework to facilitate further integration of the EU AIF market. The objective is to look at the specific regulatory aspects where their potential refining could enhance utility of the AIFM passport, gathering data on concrete costs and benefits of the suggested improvements, at the same time ensuring that the investor and financial stability interests are served in the best way. A number of questions focus on the level playing field between AIFMs and other financial intermediaries.

Question 1. What is your overall experience with the functioning of the AIFMD legal framework?

- Very satisfied
- Satisfied
- Neutral
- Unsatisfied
- Very unsatisfied
- Don't know / no opinion / not relevant

Question 2. Do you believe that the effectiveness of the AIFMD is impaired by national legislation or existing market practices?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 2.1 Please explain your answer to question 2, providing concrete examples and data to substantiate it:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The AIFMD has succeeded in creating a harmonised and stringent regulatory and supervisory framework for the activities within the Union of all AIFMs and an internal market for AIFs that still allows Member States to implement necessary national legislation.

For sub-threshold AIFMs, however, the AIFMD has not succeeded in creating a harmonised and stringent regulatory and supervisory framework for the activities within the Union. The AIFMD leaves discretion to Member States on what to require from such sub-threshold AIFMs which in turn has seen different approaches across the EU. This is a clear example of where the AIFMD is impaired by the national legislation or existing market practices.

Question 3. Please specify to what extent you agree with the statements below:

The AIFMD has been successful in achieving its objectives as follows:

	1 (fully disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know - No opinion - Not applicable
creating internal market for AIFs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
enabling monitoring risks to the financial stability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
providing high level investor protection	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other statements:

	1 (fully disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know - No opinion - Not applicable
The scope of the AIFM license is clear and appropriate	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>The AIFMD has provided EU AIFs and AIFMs added Value</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Question 3.1 Please explain your answer to question 3, providing quantitative and qualitative reasons to substantiate it:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We agree that the AIFMD has enabled and supported the creation of an internal market for AIFs (and AIFMs) within the EU and also enabled ESMA and National Competent Authorities (NCAs) in monitoring risks relating to the financial stability on this market.

The AIFMD has provided a regulatory framework for AIFMs in regards of e.g. governance, competences, portfolio and risk management, valuation and delegation, and this framework ensures investors a certain level of investor protection.

However, in terms of provisions on the subject of investor protection, we believe the AIFMD is lacking. This is also seen in light of the objectives of the AIFMD in which investor protection plays a small part. This vacuum is particularly evident with regard to retail investors for which investor protection rules are subject to national regulation, thus facilitating different levels of investor protection within the EU.

To that end, we do not believe that the AIFMD objectives correspond to the needs and problems within the EU asset management and financial markets. Furthermore, the increase in AIFMs as well as investments in alternatives (by both professional investors and retail investors) demands an increased focus on investor protection. On other aspects of the current AIFMD objectives we find the AIFMD legal framework operates well .

Lastly, we disagree that the scope of the AIFM license is clear and appropriate. This is elaborated in the questions below.

Any legislative amendments should address these issues by e.g. expanding the scope to include investor protection, further clarify the scope of AFIM license and ensure appropriate investor protection rules.

Question 4. Is the coverage of the AIFM licence appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 4.1 What other functions would you suggest adding to the AIFM licence ?

Please explain your choice also considering related safeguards and requirements, such as protecting against potential conflicts of interest, where appropriate, disadvantages and benefits of the proposed approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The AIFM license covers a number of different activities. The scope would benefit from a clarification of what activities an AIFM can and must perform in terms of marketing and selling shares in AIFs managed by the AIFM.

Currently it is not clear whether an AIFM can provide investment advice for shares in AIFs managed by the AIFM (within in the scope of an AIFM license) and, secondly, whether that is a requirement.

According to the ELTIF regulation a AIFM must perform a suitability test and be authorised to provide the services referred to in points (a) and (b)(i) of Article 6(4) of the AIFMD in order to market shares in an ELTIF to retail investors. We see this as an opportunity for the AIFMD to clarify whether the scope of the AIFM license in itself encompasses such requirements or not.

See also the answer to question 10.

Question 5. Should AIFMs be permitted to invest on own account?

- Yes
- No
- Don't know / no opinion / not relevant

Question 5.1 If yes, what methods and limitations to this possibility should be imposed ?

Please explain your proposition in terms of conflicts of interest, benefits and disadvantages as well as costs, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If an AIFM are to be permitted to invest on own account, AIFMs should be subject to the requirements which MiFID-entities investing on own account are subject to. This would ensure a level playing field.

Question 6. Are securitisation vehicles effectively excluded from the scope of the AIFMD?

- Yes
- No
- Don't know / no opinion / not relevant

Question 6.1. What elements would you suggest introducing into the AIFMD to exclude securitisation vehicles from the scope of the AIFMD more

effectively and reducing regulatory arbitrage possibilities?

Please explain:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We find that the definition the exemption for securitisation vehicles in article 3 of the AIFMD is sufficient.

Question 7. Is the AIFMD provision providing that it does not apply to employee participation schemes or employee savings schemes effective?

- Yes**
- No
- Don't know / no opinion / not relevant

Question 7.1 Please explain your answer to question 7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We find that the definition the exemption for employee participation schemes or employee savings schemes in article 3 of the AIFMD is sufficient.

Question 8. Should the AIFM capital requirements be made more risk-sensitive and proportionate to the risk-profile of the managed AIFs?

- Yes
- No**

- Don't know / no opinion / not relevant

Question 8.1 Please explain your answer to question 8, presenting benefits and disadvantages of your approach as well as potential costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not find it necessary that AIFM capital requirements is made more risk- sensitive and proportionate to the risk-profile of the managed AIFs. This aspect is addressed in Article 9(7) that requires additional capital to cover potential professional liability risks due to operational risks.

We believe the risk-profile of the managed AIFs should be reflected in other areas of the AIFMD, e.g. the organisation, portfolio and risk management, compliance and valuation.

However, we find that the capital requirements should be aligned for e.g. investment firms when AIFMs providing ancillary services. This is clarified in the answer to question 12.

Question 9. Are the own funds requirements of the AIFMD appropriate given the existing initial capital limit of EUR 10 million although not less than one quarter of the preceding year's fixed overheads?

- Yes
- No
- Don't know / no opinion / not relevant

Question 9.1 Please explain your answer to question 9, detailing any suggestion of an alternative policy option, and presenting benefits and disadvantages of the entertained options as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 10. Would the AIFMD benefit from further clarification or harmonisation of the requirements concerning AIFM authorisation to provide ancillary services under Article 6 of the AIFMD?

- Fully agree

- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 10.1 Please explain your answer to question 10, presenting benefits and disadvantages of the entertained options as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We fully agree that the AIFMD would benefit from further clarification and harmonisation of the requirements concerning AIFM authorization to provide ancillary services under Article 6 of the AIFMD. We also refer to previous work at the level of for example ESMA which also indicates the need for further legislative clarifications on the scope.

As stated in responses to questions 3 and 4, we find that the scope of the AIFM license is unclear. This is especially the case for an AIFM that provides ancillary services. We find it appropriate to further clarify the types of investors for which ancillary services can be provided (i.e. can the service only be provided for professional investors or also retail investors), whether the services are limited to certain financial instruments and/or the investment strategy in the managed AIFs, and to what extent MiFID-rules applies.

While Article 6(6) of the AIFMD include cross-references to certain MiFID rules, legal uncertainties remain as to the precise application of the MiFID and/or AIFMD rules in some cases. By way of example, questions have arisen whether and to which extent MiFID and/or AIFMD/UCITS rules could be applied to discretionary portfolio management or investment advice on assets that do not qualify as 'financial instruments' pursuant to Section C of Annex I of MiFID, taking into account that the relevant MiFID provisions do not apply to them.

We also see merit in providing a greater regulatory consistency and level playing field between AIFMD and MiFID in order to ensure that entities providing similar types of services, such as marketing, are subject to similar regulatory standards. To this end, there would be merit in clarifying the AIFMD and MiFID frameworks to ensure that AIFs and their managers and MiFID investment firms always remain subject to the same regulatory standards, while providing the same type of services.

Further, practice has shown that NCAs have divergent views on whether AIFMs could be permitted to perform business activities other than those explicitly listed in Article 6 of the AIFMD. As a result, the list of permissible business activities of AIFMs in some Member States is broader than in others.

Lastly, we see merit in clarifying to what extent the services in Article 6(4) can be provided within the management of AIFs. Legal uncertainty remain as to whether the mentioned activities may only be secondary activity and whether it can be extended beyond the scope of the investment strategies in the managed AIFs. The legal uncertainty makes room for regulatory arbitrage by MiFID investment firms applying for an AIFM license.

To avoid regulatory arbitrage and ensure investor protection, legislative amendments should ensure that AIFMs providing ancillary services are subject to the same regulatory standards across the EU, while providing the same type of services, and clarify the scope of ancillary services provided by an AIFM.

Without such clarification an unlevel playing field between AIFMs and entities subject to MiFID-rules (e.g. investment firms) will continue.

Question 11. Should the capital requirements for AIFMs authorised to carry out ancillary services under Article 6 of the AIFMD be calculated in a more risk-sensitive manner?

- Yes
- No
- Don't know / no opinion / not relevant

Question 11.1 Please explain your answer to question 11, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See the answer to question 8.

Question 12. Should the capital requirements established for AIFMs carrying out ancillary services under Article 6 of the AIFMD correspond to the capital requirements applicable to the investment firms carrying out identical services?

- Yes
- No
- Don't know / no opinion / not relevant

Question 12.1 Please explain your answer to question 12, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In order to ensure a level playing field and avoid regulatory arbitrage we find the capital requirements established for AIFMs carrying out ancillary services under Article 6 of the AIFMD should correspond to the capital requirements applicable to the investment firms carrying out identical services.

Please also see the answer to question 10.

Question 13. What are the changes to the AIFMD legal framework needed to ensure a level playing field between investment firms and AIFMs providing competing services ?

Please present benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to the answer for question 10.

As highlighted in the answer to question 10, a level playing field between investment firms and AIFMs providing competing services requires clarification on different areas. First of all, clarification of the overall scope of the license to provide ancillary services as an AIFM. Secondly, harmonization between the AIFMD and MiFID-II is necessary to ensure that both types of entities are subject to the same requirements which in turn will ensure the same level of investor protection.

Question 14. Would you see value in introducing in the AIFMD a Supervisory Review and Evaluation Process (SREP) similar to that applicable to the credit institutions?

- Yes
- No
- Don't know / no opinion / not relevant

Question 14.1 Please explain your answer to question 14, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not see value in introducing a SREP in the AIFMD identical to what is applicable to credit institutions. We believe such a SREP would be disproportionate when taking into the consideration of different nature and structures of AIFs, the vast number of AIFs compared to credit institutions as well as the difference in regulatory set-up for the credit institutions which the SREP caters for.

Question 15. Is a professional indemnity insurance option available under the AIFMD useful?

- Yes
- No
- Don't know / no opinion / not relevant

Question 15.1 Please explain your answer to question 15, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To our understanding the option of a professional indemnity insurance to cover potential professional liability risks is a useful tool for AIFMs.

Question 16. Are the assets under management thresholds laid down in Article 3 of the AIFMD appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 16.1 If not, please suggest different thresholds and explain your choice, including benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not find the assets under management thresholds laid down in Article 3 of the AIFMD appropriate. These AIFMs entail the same risk as licensed AIFMs. Furthermore, an increase in the number of sub-threshold AIFs have been seen creating a sub-market for AIFMs that are not subject to same regulatory framework.

We find it appropriate that sub-threshold AIFMs are also subject to the AIFMD (either fully or partially). This is to ensure both a level playing field between AIFMs and to ensure that the investor protection provided by the AIFMD is also enjoyed by investors at all levels, also when investing in AIFs managed by sub-threshold AIFMs.

Question 17. Does the lack of an EU passport for the sub-threshold AIFMs impede capital raising in other Member States?

- Yes
- No
- Don't know / no opinion / not relevant

Question 17.1 Please further detail your answer to question 17, substantiating it, also with examples of the alleged barriers:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not find that the lack of an EU passport for the sub-threshold AIFMs impeded capital raising in other Member States. A sub-threshold AIF has the option to opt-in and thereby enjoying the benefit of the AIFMD.

Question 18. Is it necessary to provide an EU level passport for sub-threshold AIFMs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 18.1 If yes, should the regulation of the sub-threshold AIFM differ from the regulation of the full-scope AIFMs under the AIFMD and in which way?

Please explain your proposition, including costs/benefits of the proposed approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 18.1 Please explain your answer to question 18:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly disagree that it is necessary to provide an EU level passport for sub-threshold AIFMs. As explained in question 17, a sub-threshold AIFM can opt-in and thereby enjoy the benefits of the AIFMD.

By providing a passport for sub-threshold investor protection is currently impeded as these AIFMs are not subject to any harmonized regulation, but only a requirement to register.

Question 19. What are the reasons for EuVECA managers to opt in the AIFMD regime instead of accessing investors across the EU with the EuVECA label?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We have no opinion on this matter.

Question 20. Can the AIFM passport be improved to enhance cross-border marketing and investor access?

- Yes
- No
- Don't know / no opinion / not relevant

Question 20.1 If so, what specific measures would you suggest?

Please explain your suggestions, presenting benefits and disadvantages as well as potential costs thereof, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 20.1 Please explain your answer to question 20:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We find that the provision on AIFM passports are appropriate in terms of ensuring AIFMs can manage and market AIFs within the EU.

However, we wish to stress that there should not be a passport for marketing AIFs to retail investors.

II. Investor protection

The AIFMD aims to protect investors by requiring AIFMs to act with the requisite transparency before and after investors commit capital to a particular AIF. Conflicts of interest must be managed in the best interest of the investors in the AIF. AIFMs must also ensure that the AIF's assets are valued in accordance with appropriate and consistent valuation procedures established for an each AIF. The AIF assets are then placed in safekeeping with an appointed depository that also oversees AIF's cash flows and ensures regulatory compliance.

Questions in this section cover the topic of investor categorisation referencing to MiFID II, stopping short of repeating the same questions that have been raised in its [recent public consultation on MiFID II](#), rather inviting comments on the most appropriate way forward. Views are also sought on the conditions that would make it possible to open up the AIF universe to a larger pool of investors while considering their varying degrees of financial literacy and risk awareness. Examples of redundant or insufficient investor disclosures are invited.

Greater clarity on stakeholders' views of the AIFMD rules on depositaries is sought in particular where such rules may require clarification or amending. The introduction of the depository passport is desirable from an internal market point of view, but stakeholders are invited to propose other potential legal solutions, if any, that could address the issue of the short supply and concentration of depository services in smaller markets.

a) Investor classification and investor access

Question 21. Do you agree that the AIFMD should cross-refer to the client categories as defined in the MIFID II (Article 4(1)(ag) of the AIFMD)?

- Yes
- No
- Don't know / no opinion / not relevant

If no, how could the investor classification under the AIFMD be improved?

Please give examples where possible and present benefits and disadvantages of your suggested approach as well as potential costs of the change:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:

Question 21.1 Please explain your answer to question 21:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Currently the AIFMD is cross-referring to the MiFID II. As investor categories are handled in MiFID II this approach should continue. Overall, we do not find it necessary to introduce a separate or specific investor category for AIFM and AIFs. The AIFM should mirror changes and clarifications in MiFID II. This ensures similar investor protection across legislation for the similar category of investor.

If introduction of new categories of investors under the AIFMD were to be contemplated (such as “semi-professional” or “well informed” investors), these should be accompanied by appropriate investor protection rules and all passporting activities should be restricted to concern only marketing to professional investors.

Question 22. How AIFM access to retail investors can be improved?

Please give examples where possible and present benefits and disadvantages of your suggested approach as well as potential costs of the change:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To improve access for retail investors to AIFs, the AIFMD requires a shift and thus a greater focus on (retail) investor protection. Currently the AIFMD is in its essence intended for only professional investors as marketing towards retail investors requires a Member State’s permission in its jurisdiction.

Increased access to retail investors would in our view necessarily include introducing MiFID provisions such as investment advice and suitability test, adapting the overall objective of the AIFMD and expanding on its provisions.

If the AIFMD is further opened to retail investors, the AIFMD should still allow Member States to impose stricter requirements on the AIFM or the AIF as a precondition for marketing to retail investors compared to the requirements applicable to the AIFs marketed to professional investors.

Please also see the answer to question 21.

Question 23. Is there a need to structure an AIF under the EU law that could be marketed to retail investors with a passport?

- Yes
- No
- Don’t know / no opinion / not relevant

**Question 23.1 If yes, what are the requirements that should be imposed on
s u c h A I F s ?**

Please give examples where possible and present benefits and disadvantages of your suggested approach as well as potential costs of the change:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 23.1 Please explain your answer to question 23:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not find that there is need to structure a certain type of AIF under the EU law that could be marketed to retail investors with a passport. Such structures could impede Member States' competence to impose stricter requirements on the AIFM or the AIF (in accordance with article 43 of the AFIMD) thereby opening up for regulatory circumvention.

Instead, we find that the AIFMD would benefit from provisions on investor protection set at a high minimum level across the EU. This would entail the introduction of MiFID provisions (see also the answer to question 22).

In that context inspiration from other regulations could be sought. According to the ELTIF regulation, additional requirements are imposed on the AIFM and AIF when distributing ELTIFs to retail investors such as performing a suitability test, ensure the retail investor does not invest an aggregate amount exceeding 10 % of that investor's financial instrument portfolio, ensuring the legal form of an ELTIF marketed to retail investors does not lead to any further liability for the retail investor, and provide the retail investor a withdrawal period of 2 weeks. There is no reason why other types of AIFs targeting retail investors should not be subject to these provisions.

The AFIMD should however still allow Member States to impose stricter requirements on the AIFM or the AIF as a precondition for marketing to retail investors than the requirements applicable to the AIFs marketed to professional investors in order to ensure adequate investor protection.

b) depositary regime

**Question 24. What difficulties, if any, the depositaries face in exercising their
functions in accordance with the AIFMD?**

Please provide your answer by giving concrete examples identifying any barriers and associated costs.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Depositories are not obliged to have access to the cash accounts of the alternative investment fund's subsidiaries. Neither is the depository obliged to verify and monitor the cash flow of the alternative investment fund's subsidiaries. Many such alternative investment funds are structured in such a way that the vast majority of cash flows (both in numbers of cash flows and amounts being transferred) are made from the subsidiaries, either between subsidiaries or external transactions. This means that the depository lacks significant insight into the cash flows of the structure of the alternative investment fund.

It should be considered whether cash flow monitoring should (based on the same principles that apply to asset verification) be performed on a look through principle, so that the depository has access to the accounts of the alternative investment funds' subsidiaries and is obliged to monitor and reconcile and verify cash flows of the subsidiaries.

Depositories may face difficulties and challenges monitoring non-financial assets (real estate, infrastructures etc.). The depository can monitor and check a deed, but this does not necessarily guarantee that the asset is actually there. For example, a real estate may have been damaged or burned to ground which do not show up on the ground. While the depositories are subject to requirements to ensure the assets, the AIFMD would benefit from clarifying to what extent depositories are obliged to control/monitor whether the assets is still there.

Question 25. Is it necessary and appropriate to explicitly define in the AIFMD tri-party collateral management services?

- Yes
- No
- Don't know / no opinion / not relevant

Question 25.1 Please explain your answer to question 25:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To clarify uncertainties and ensure uniform understanding, legislative amendments should define and clarify tri-party collateral management services within the AIFMD as well as provide a regulatory framework.

Question 26. Should there be more specific rules for the delegation process, where the assets are in the custody of tri-party collateral managers?

- Yes
- No
- Don't know / no opinion / not relevant

Question 26.1 Please explain your answer to question 26, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see the answer to question 25

Question 27. Where AIFMs use tri-party collateral managers' services, which of the aspects should be explicitly regulated by the AIFMD?

Please select as many answers as you like

- the obligation for the asset manager to provide the depositary with the contract it has concluded with the tri-party collateral manager
- the flow of information between the tri-party collateral manager and the depositary
- the frequency at which the tri-party collateral manager should transmit the positions on a fund-by-fund basis to the depositary in order to enable it to record the movements in the financial instruments accounts opened in its books
- no additional rules are necessary, the current regulation is appropriate
- other**

Please explain why you think the obligation for the asset manager to provide the depositary with the contract it has concluded with the tri-party collateral manager should be explicitly regulated by the AIFMD.

Please present benefits and disadvantages of this approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why you think the flow of information between the tri-party collateral manager and the depositary should be explicitly regulated by the A I F M D .

Please present benefits and disadvantages of this approach as well as

potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why you think the frequency at which the tri-party collateral manager should transmit the positions on a fund-by-fund basis to the depositary in order to enable it to record the movements in the financial instruments accounts opened in its books should be explicitly regulated by the A I F M D .

Please present benefits and disadvantages of this approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please specify what are the other aspect(s) that should be explicitly regulated by the A I F M D .

Please present benefits and disadvantages of this/these approach(es) as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We find that no additional rules are necessary within the AIFMD, but that rules and guidelines should be elaborated in the AIFMR and/or ESMA guidelines.

Question 28. Are the AIFMD rules on the prime brokers clear?

- Yes
- No
- Don't know / no opinion / not relevant

Question 28.1 Please explain your answer to question 28, providing concrete examples of ambiguities and where available suggesting improvements:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

When taken into account the rules in the AIFMR, we find that the rules are sufficiently clear.

Question 29. Where applicable, are there any difficulties faced by depositaries in obtaining the required reporting from prime brokers?

- Yes
- No
- Don't know / no opinion / not relevant

Question 29.1 Please explain your answer to question 29, providing concrete examples and suggesting improvements to the current rules and presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:

Question 30. What additional measures are necessary at EU level to address the difficulties identified in the response to the preceding question?

Please explain your answer providing concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 31. Does the lack of the depositary passport inhibit efficient functioning of the EU AIF market?

- Yes
- No
- Don't know / no opinion / not relevant

Question 31.1 Please explain your answer to question 31:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A depositary is an integrated part of an AIF. We therefore find it important that the supervision with a depositary continues as the main rule to be a matter for the Member State in which the AIFM is registered. A passport may impair the depositaries from fulfilling its tasks of, among other things, monitoring and safe-keeping, which in turn leads to impairment of investor protection.

Question 32. What would be the potential benefits and risks associated with the introduction of the depositary passport?

Please explain your position, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see the answer to question 31.

Question 33. What barriers are precluding introducing the depositary passport?

Please explain your position providing concrete examples and evidence, where available, of the existing impediments:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see the answer to question 31.

Question 34. Are there other options that could address the lack of supply of depositary services in smaller markets?

Please explain your position presenting benefits and disadvantages of your suggested approach as well as potential costs of the change:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The lack of supply of depositary services in smaller markets could be related to the fact that a small market equals that the potential turnover for depositaries is limited. Since it is costly to have a setup that may provide depositary services even for one client, small markets do not allow for large supply of depositary services.

Question 35. Should the investor CSDs be treated as delegates of the depositary?

- Yes
- No
- Don't know / no opinion / not relevant

Question 35.1 Please explain your answer to question 35, providing concrete examples and suggesting improvements to the current rules and presenting benefits and disadvantages as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We find that the AIFMD should be clarified to allow depositaries not to apply the delegation rules to CSDs in their capacity as Issuer CSDs. Depositaries should be required to apply the delegation rules to CSDs in their capacity as Investor CSDs.

c) transparency and conflicts of interest

Question 36. Are the mandatory disclosures under the AIFMD sufficient for investors to make informed investment decisions?

- Yes
- No
- Don't know / no opinion / not relevant

Question 36.1 If not, what elements of the mandatory disclosures under the AIFMD could be amended?

Please explain your position presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The mandatory disclosures are sufficient in terms of professional investors, but it is insufficient in the event a Member States allow the marketing of AIFs to retail investors.

If the AIFMD is to open up to retail investors, legislative amendments should expand on these disclosures to ensure a more standardized and clear presentation for retail investors.

Question 37. What elements of mandatory disclosure requirements, if any, should differ depending on the type of investor?

Please explain your position, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In particular elements such as investment strategy, risk, liquidity management (for open-ended AIFs) and costs/fees should differ depending on the type of investor. A retail investor must be presented with this information in a more standardized and clear manner than a professional investor, as a retail investor does not have the same qualifications to compare and evaluate these elements, including differences.

These principles are known in e.g. PRIIP KIDs and disclosures within the AIFMD should be aligned with those principles.

Question 38. Are there any additional disclosures that AIFMs could be obliged to make on an interim basis to the investors other than those required in the annual report?

- Yes
- No
- Don't know / no opinion / not relevant

Question 38.1 Please explain your answer to question 38, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 39. Are the AIFMD rules on conflicts of interest appropriate and proportionate?

- Yes



No

- Don't know / no opinion / not relevant

Question 39.1 If not, how could the AIFMD rules on conflicts of interest be amended?

Please provide your suggestions, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Considering the rules in the AIFMR, we find that the AIFMD rules on conflicts of interest are appropriate and proportionate.

d) valuation rules

Question 40. Are the AIFMD rules on valuation appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 40.1 Please explain your answer to question 40, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Due to the Prudent Person Principle there are different requirements for AIFMs and insurance and reinsurance undertakings. Considering that the latter group invests in AIFs, legislative amendments should harmonize the requirements for AIFMS and insurance and reinsurance undertakings.

In terms of the current provisions we find that they are otherwise appropriate. However, there is a need for expansion on the provisions in the AIFMR and guidelines differentiating on different assets (for example between liquid and non-liquid assets).

Question 41. Should the AIFMD legal framework be improved further given the experience with asset valuation during the recent pandemic?

Yes

-

- No
- Don't know / no opinion / not relevant

Question 41.1 Please explain your answer to question 41, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We have not identified any problems regarding the functioning of the valuation rules in the AIFMD that are related to the recent pandemic.

Nevertheless, we support further clarification regarding the valuation rules if necessary. We find that such further clarification is a matter of ESMA investigation and guidelines.

Question 42. Are the AIFMD rules on valuation clear?

- Yes
- No
- Don't know / no opinion / not relevant

Question 42.1 Please explain your answer to question 42:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The AIFMD rules on valuation use broad formulations because the rules must be able to take into account many different types of AIFM. Broad formulations have the benefits that they are able to take into account many different types of AIFM's, but have the disadvantage that it may be unclear what is sufficient to be compliance when investing in different types of assets. This can create challenges for both companies and national regulators.

AIFMD rules on valuation can become more clear taking the above into account, but we find that this is a matter best suited for the AIFMR and/or guidelines.

By for example, clarification of a "fair valuation" should be clarified.

Question 43. Are the AIFMD rules on valuation sufficient?

- Yes
- No
- Don't know / no opinion / not relevant

Question 43.1 Please explain your answer to question 43, explaining what rules on valuation are desirable to be included in the AIFMD legal framework:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Taking the provisions of the AIFMR into consideration, we find that the AIFMD rules on valuation are sufficient, if the rules become more clear. However, we find that further elaboration within the AIFMR and ESMA guidelines would be welcomed.

The AIFMD rules on valuation uses broad formulations because the rules must be able to take into account many different types of AIFM. Broad formulations with in the AIFMD are important as they have the benefits of taking into account the different types of AIFs.

Question 44. Do you consider that it should be possible in the asset valuation process to combine input from internal and external valuers?

- Yes
- No
- Don't know / no opinion / not relevant

Question 44.1 Please substantiate your answer to question 44, also in terms of benefits, disadvantages and costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We find that the AIFMD in its current form does not prevent such interpretation of the current rules, but that the AIFMD would benefit from clarifying that input from internal and external valuers can be used, including a clarification on the interaction between the internal valuation function and the external valuer.

The opportunity to combine input from external and internal valuers will be an advantage in those situations where the valuation is largely based on subjectivity which is the case with many assets that AIF's invest in. The comparison gives the AIFM the opportunity to identify outliers and weaknesses in their valuation processes.

Question 45. In your experience, which specific aspect(s) trigger liability of a v a l u e r ?

Please provide concrete examples, presenting costs linked to the described occurrence:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our experience both "gross negligence" and "simple negligence" may trigger liability. However, the extent and possible triggers are also set out in general rules of the agreement

between the AIFM and the valuer.

Question 46. In your experience, what measures are taken to mitigate/offset the liability of valuers in the jurisdiction of your choice?

Please provide concrete examples, presenting benefits and disadvantages as well as costs of the described approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The extent and possible triggers are often regulated in the agreement between the AIFM and the valuer. We have no further knowledge of this element.

III. International relations

Considering the global nature of financial services, the AIFMD interacts with the third country regulatory regimes. By adopting the AIFMD the EU co-legislators sought to put in place a legal framework for tackling risks emanating from AIF activities that may impact the EU financial stability, market integrity and investor protection. The questions below are seeking views on where to strike the balance of having a functioning, efficient AIF market and ensuring that it operates under the conditions of a fair competition without undermining financial stability. Besides posing general questions on the competitiveness of the EU AIF market, this section seeks views on how the EU market could interact with international partners in the area governed by the AIFMD. The focus is on the appropriateness of the AIFMD third country passport regime and delegation rules.

Question 47. Which elements of the AIFMD regulatory framework support the competitiveness of the EU AIF industry?

Please explain providing concrete examples and referring to data where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The creation of a harmonised and stringent regulatory and supervisory framework for the activities within the Union of all AIFMs and an internal market for AIFs have provided an open market within the EU and thereby increased competition within this market.

This provides investors with AIFMs that subject to harmonized regulation – i.e. an investor knows that it is dealing with a licensed AIFM that are subject to certain rules (this is however not true for sub-threshold AIFMs) independent of the Member States which the AIFM is domiciled in.

Question 48. Which elements of the AIFMD regulatory framework could be altered to enhance competitiveness of the EU AIF industry?

Please explain providing concrete examples and referring to data where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would like to stress that any alterations to enhance the competitiveness of the EU AIF industry should not jeopardize or hinder investor protection.

Question 49. Do you believe that national private placement regimes create an uneven playing field between EU and non-EU AIFMs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 49.1 If you believe there is an uneven playing field between EU and non-EU AIFMs, which action would you suggest to address the issue?

Please explain your choice, presenting benefits and disadvantages of the potential changes to the AIFMD as well as potential costs associated with your preferred option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A non-EU AIFM is not subject to the AIFMD and it may be subject to a lesser requirement. As a consequence, it is necessary that the non-EU AIFMs comply with extra rules. The EU AIFM will have undergone a very comprehensive authorization process and on the basis of this have access to the other EU countries. The NCA's cannot be sure that this is the case regarding non EU AIFMs. Thus, many NCAs have additional rules that non-EU AIFM have to comply with before they can market funds in the EU.

This does admittedly create an uneven playing field because non-EU AIFMs have to comply to additional, but divergent rules before they can access the EU market.

Question 50. Are the delegation rules sufficiently clear to prevent creation of letter-box entities in the EU?

- Yes
- No
- Don't know / no opinion / not relevant

Question 50.1 Please explain your answer to question 50:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Together with provisions in the AIFMR, the provisions on delegation is sufficiently clear to prevent creation of letter-box entities in the EU.

The AIFMR clarifies that an AIFM must provide at least portfolio or risk management – i.e. only one core activity can be delegated.

Question 51. Are the delegation rules under the AIFMD/AIFMR appropriate to ensure effective risk management?

- Yes
- No
- Don't know / no opinion / not relevant

Question 51.1 Please explain your answer to question 51, presenting benefits and disadvantages of the current rules and where available providing concrete examples substantiating your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The effectiveness of a delegated risk management function depends on the extent to which the AIFM is capable of ensuring adequate monitoring and evaluation of the delegated function. The monitoring is dependent on how good the AIFM is to ensure measurable reporting criteria.

We find that the current provisions are not appropriate when delegation is conferred on a third-country undertaking. Since third-country undertakings are not regulated by the same regulations there are a risk of regulatory arbitrage. The AIFMD would benefit from imposing stricter rules when delegation of risk management (and portfolio management) is conferred to third-country undertakings.

Question 52. Should the AIFMD/AIFMR delegation rules, and in particular Article 82 of the Commission Delegated Regulation (EU) No 231/2013, be complemented?

- Yes
- No
- Don't know / no opinion / not relevant

Question 52.1 Should the delegation rules be complemented with:

Please select as many answers as you like

- quantitative criteria
- a list of core or critical functions that would be always performed internally and may not be delegated to third parties
- other requirements

Please explain why you think the AIFMD/AIFMR delegation rules should be complemented with quantitative criteria, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why you think the AIFMD/AIFMR delegation rules should be complemented with a list of core or critical functions, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Providing a list of core or critical functions that would be always performed internally and may not be delegated to third parties would prevent letter-box entities and ensure greater legal certainty on what tasks must always be performed by an AIFM.

Please explain with what other requirements the AIFMD/AIFMR delegation rules should be complemented, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As highlighted in the answer question 52, we find that the current provisions are not appropriate when delegation is conferred on a third-country undertaking. Since third-country undertakings are not regulated by the same regulations there are a risk of regulatory arbitrage.

To avoid legal arbitrage, legislative amendments should impose stricter rules when delegation of risk management (and portfolio management) is conferred to third-country undertakings.

Question 53. Should the AIFMD standards apply regardless of the location of a third party, to which AIFM has delegated the collective portfolio management functions, in order to ensure investor protection and to prevent regulatory arbitrage?

- Yes
- No
- Don't know / no opinion / not relevant

Question 53.1 Please explain your answer to question 53:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Delegation adds regulatory complexity and provides for additional supervisory challenges for NCAs, in particular where the delegate is established in another Member State or outside of the EU. Depending on the regulatory license of the delegate, questions may also arise about regulatory level playing field and possible circumvention of AIFMD regulatory standards.

In the case of delegation to another regulated EU entity, this is often a question of regulatory consistency between the various EU regulatory regimes, while this is not the case of delegation to non-EU delegates. In the latter case, the regulatory arbitrage and investor protection concerns may be further increased since the non-EU delegate will not be directly subject to the AIFMD frameworks.

Consequently, AIFs can be largely managed on a day-to-day basis by third parties (within or outside of the EU) that are not directly subject to the AIFMD. To avoid regulatory arbitrage and protect EU investors, legislative amendments should ensure that the management of AIFs and UCITS is subject to the regulatory standards set out in the AIFMD and UCITS frameworks, irrespective of the regulatory license or location of the delegate.

Question 54. Do you consider that a consistent enforcement of the delegation rules throughout the EU should be improved?

- Yes
- No
- Don't know / no opinion / not relevant

Question 54.1 Please explain your answer to question 54, presenting benefits and disadvantages of the current rules and where available providing concrete examples substantiating your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To avoid unlevel playing fields and to ensure harmonization within the EU, consistent enforcement of the delegation is important and should be improved. However, such improvement would be best introduced through guidelines and through supervisory convergence work in the standing committees.

Question 55. Which elements of the AIFMR delegation rules could be applied to UCITS ?

Please explain your position, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not find that this is relevant for the AIFMD or the scope of this consultation.

IV. Financial stability

One of the main objectives of the AIFMD is to enable supervisors to appreciate and mitigate systemic risks building up in financial markets from different sources. To this end, AIFMs are subject to periodic reporting obligations and supervisors are equipped with certain market intervention powers to mitigate negative effects to the financial stability that may arise from the activities on the AIF market.

The section below invites opinions whether the intervention powers and a tool-kit available to the relevant supervisors are sufficient in times of severe market disruptions. Shared views on the adequacy of the AIFMR supervisory reporting template will be important in rethinking the AIFM supervisory reporting obligations. According to the FSB report, markets for leveraged loans and CLOs have grown significantly in recent years exceeding pre-crisis levels ([FSB, Vulnerabilities associated with leveraged loans and collateralised loan obligations \(CLOs\), PLEN/2019/91-REV, 22 November 2019](#)). While most leveraged loans are originated and held by banks, investment funds are also exposed to the leveraged loan and CLO markets. In order to assess risks to the financial stability and regulatory implications associated with leveraged loans and CLOs it would be commendable to continue collecting the relevant data and monitoring the market. The stakeholders are invited to cast their views on the matter.

With particular regard to the loan originating AIFs, suggestions on the optimal harmonisation of the rules that could apply to these collective investment vehicles are welcome. Finally, questions are raised whether leverage calculation methods could benefit from further standardisation of metrics across the AIF market and potentially also across the UCITS for the supervisors to have a complete picture of the level of leverage engaged by the collective investment funds.

a) macroprudential tools

Question 56. Should the AIFMD framework be further enhanced for more effectively addressing macroprudential concerns?

- Yes
- No
- Don't know / no opinion / not relevant

Question 56.1 If yes, which of the following amendments to the AIFMD legal framework would you suggest?

Please select as many answers as you like

- improving supervisory reporting requirements
-

harmonising availability of liquidity risk management tools for AIFMs across the EU

- further detailing cooperation of the NCAs in case of activating liquidity risk management tools, in particular in situations with cross-border implications
- further clarifying grounds for supervisory intervention when applying macroprudential tools
- defining an inherently liquid/illiquid asset
- granting ESMA strong and binding coordination powers in market stress situations
- other

Please explain why you would suggest improving supervisory reporting requirements .

Please present benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why you would suggest harmonising availability of liquidity risk management tools for AIFMs across the EU.

Please present benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain why you would suggest further detailing cooperation of the NCAs in case of activating liquidity risk management tools, in particular in situations with cross-border implications.

Please present benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain why you would suggest further clarifying grounds for supervisory intervention when applying macroprudential tools.

Please present benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain why you would suggest defining an inherently liquid/illiquid asset.

Please present benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain why you would suggest granting ESMA strong and binding coordination powers in market stress situations.

Please present benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:

Please explain what other amendments to the AIFMD legal framework you would suggest.

Please present benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:

Question 56.1 Please explain your answer to question 56:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not find it necessary that additional macroprudential tools are added to the AIFMD.

As will be explained in this section, we support further clarifications in the AIFMR and additional guidelines.

Question 57. Is there a need to clarify in the AIFMD that the NCAs' right to require the suspension of the issue, repurchase or redemption of units in the public interest includes financial stability reasons?

- Yes
- No
- Don't know / no opinion / not relevant

Question 57.1 Please explain your answer to question 57, presenting benefits and disadvantages of the potential changes to the existing rules and processes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We find the current provision to be sufficient.

Question 58. Which data fields should be included in a template for NCAs to report relevant and timely data to ESMA during the period of the stressed market conditions ?

Please provide your suggestions, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
No view.

Question 59. Should AIFMs be required to report to the relevant supervisory authorities when they activate liquidity risk management tools?

- Yes
- No
- Don't know / no opinion / not relevant

Question 59.1 Please explain your answer to question 59, providing costs, benefits and disadvantages of the advocated approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Liquidity risk management tools differ between AIFMs and throughout the EU, and activation of liquidity risk management tools may be triggered by different events. Consequently, AIFMs may handle liquidity risks differently in similar events which can be to the detriment of investors.

To protect EU investors and ensure NCAs are aware of the different liquidity risk management tools available and applied, legislative amendments should ensure that AIFMs report to the relevant supervisory authorities when they activate liquidity risk management tools.

Question 60. Should the AIFMD rules on remuneration be adjusted to provide for the de minimis thresholds?

- Yes
- No
- Don't know / no opinion / not relevant

Question 60.1 Please explain your answer to question 60, suggesting thresholds and justification thereof, if applicable:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We have no observations that necessitate a minimum threshold on remuneration.

On the other hand, we would like to highlight that amendments that limit the carry interest remuneration as part of remuneration for Private Equity/Venture Capital AIFMs can have a detrimental effect on the VC/PE industry. Such amendments may make it difficult to attract and retain fund managers and employees in smaller markets, undermine the willingness of VC/PE investors to take on risk, thereby depriving businesses of an important source of financing, and/or hinder investor protection (as investors could be incentivised to join funds outside EU).

b) supervisory reporting requirements

Question 61. Are the supervisory reporting requirements as provided in the AIFMD and AIFMR's Annex IV appropriate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 61.1 Please explain your answer to question 61:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We overall agree that the reporting requirements are appropriate. However, we have identified a need for greater portfolio data on the underlying positions and an increase on reporting frequencies for large AIFs. Please see answers for the questions below.

Question 61.1 If you disagree that the supervisory reporting requirements as provided in the AIFMD and AIFMR's Annex IV appropriate, it is because of:

Please select as many answers as you like

- overlaps with other EU laws
- the reporting coverage is insufficient
- the reporting coverage is superfluous
- other

Please detail as much as possible your answer providing examples of the overlaps.

Where possible, please provide concrete examples and where relevant information on costs and benefits in changing the currently applicable reporting requirements:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There are today different reporting requirements for AIFM and MiFID entities. As they may provide the same service, they should be subject to the same requirement. To avoid regulatory arbitrage and to ensure level playing field, legislative amendments should ensure AIFMs are

subject to the same reporting requirements as MiFID entities when providing the same services.

Please detail as much as possible your answer providing examples of the insufficient reporting coverage.

Where possible, please provide concrete examples and where relevant information on costs and benefits in changing the currently applicable reporting requirements:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please detail as much as possible your answer providing examples of the superfluous reporting coverage.

Where possible, please provide concrete examples and where relevant information on costs and benefits in changing the currently applicable reporting requirements:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please specify for for what other reason the supervisory reporting requirements as provided in the AIFMD and AIFMR's Annex IV are not appropriate.

Please detail as much as possible your answer providing examples of the

Where possible, please provide concrete examples and where relevant information on costs and benefits in changing the currently applicable reporting requirements:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Question 62. Should the AIFMR supervisory reporting template provide a more comprehensive portfolio breakdown?

- Yes
- No
- Don't know / no opinion / not relevant

Question 62.1 If yes, the more detailed portfolio reporting should be achieved by:

Please select as many answers as you like

- a full portfolio reporting by relevant identifier as provided for statistical purposes
- a more granular geographical breakdown of exposures (e.g. at country level) by asset classes, investors, counterparties, and sponsorship arrangements
- requiring more details on leverage
- requiring more details on liquidity
- requiring more details on sustainability-related information, e.g. risk exposure and/or impacts
- other

Please explain why you think the more detailed portfolio reporting should be achieved by a full portfolio reporting by relevant identifier as provided for

Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A more detailed portfolio reporting allows for a better understanding and more efficient monitoring and analyzing of the market. The AIFMs already have this data available.

Please explain why you think the more detailed portfolio reporting should be achieved by more granular geographical breakdown of exposures by asset classes, investors, counterparties, and sponsorship arrangements.

Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A more detailed portfolio reporting allows for a better understanding and more efficient monitoring and analyzing of the market. The AIFMs already have this data available.

In context of investor protection, a breakdown on different types of investors (households) and the investors' home country would be welcome.

Please explain why you think the more detailed portfolio reporting should be achieved by requiring more details on leverage.

Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A more detailed portfolio reporting allows for a better understanding and more efficient monitoring and analyzing of the market. The AIFMs already have this data available.

Please explain why you think the more detailed portfolio reporting should be achieved by requiring more details on liquidity.

Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A more detailed portfolio reporting allows for a better understanding and more efficient monitoring and analyzing of the market. The AIFMs already have this data available.

Please explain why you think the more detailed portfolio reporting should be achieved by requiring more details on sustainability-related information.

Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain by what other ways you think the more detailed portfolio reporting should be achieved.

Please include concrete examples and, where possible, provide information on the benefits, disadvantages and costs of implementing this proposition:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Question 63. Should the identification of an AIF with a LEI identifier be mandatory?

- Yes**
- No
- Don't know / no opinion / not relevant

Question 63.1 Please explain your answer to question 63, presenting benefits and disadvantages as well as costs associated with introducing such a requirement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

LEI is important when reporting to ESMA and other NCAs.

To ensure that NCAs have the relevant and necessary information, the identification of an AIF with a LEI identifier should be mandatory.

Question 64. Should the identification of an AIFM with a LEI identifier be mandatory?

- Yes**
- No
- Don't know / no opinion / not relevant

Question 64.1 Please explain your answer to question 64, presenting benefits and disadvantages as well as costs associated with introducing such a requirement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See the answer to question 63.

Question 65. Should the use of an LEI identifier for the purposes of identifying the counterparties and issuers of securities in an AIF's portfolio be mandatory for the Annex IV reporting of AIFMR?

- Yes
- No
- Don't know / no opinion / not relevant

Question 65.1 Please explain your answer to question 65, presenting benefits and disadvantages as well as costs associated with introducing such a requirement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See the answer to question 63.

Question 66. Does the reporting data adequately cover activities of loan originating AIFs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Question 66.1. If not, what data fields should be added to the supervisory reporting template:

Please select as many answers as you like

- loans originated by AIFs
- leveraged loans originated by AIFs
- other

Please explain why you think loans originated by AIFs should be added as a data fields to the supervisory reporting template, providing information on the benefits, disadvantages and costs of implementation:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
No view

Please explain why you think leveraged loans originated by AIFs should be added as a data fields to the supervisory reporting template, providing information on the benefits, disadvantages and costs of implementation:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain what other data field(s) should be added to the supervisory reporting template, providing information on the benefits, disadvantages and costs of implementation:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Question 67. Should the supervisory reporting by AIFMs be submitted to a single central authority?

- Yes
- No
- Don't know / no opinion / not relevant

Question 67.1 Please explain your answer to question 67:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To ensure effective monitoring and timely action, it is important that AIFMs report to their individual NCAs. If AIFMs were to submit to a single central authority (e.g. ESMA) there is a risk that NCAs are not able to effectively monitor the AIFMs under supervision, the trends on their jurisdiction, and take the necessary timely actions.

However, for third-country AIFs we could see merit in reporting to a single central authority, e.g. ESMA.

Question 67.1 If yes, which one:

- ESMA
- other options

Please explain your choice, particularly substantiating 'other options', and provide information, where available, on the benefits, disadvantages and costs of implementing each proposition:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:

Question 68. Should access to the AIFMD supervisory reporting data be granted to other relevant national and/or EU institutions with responsibilities in the area of financial stability?

- Yes
- No
- Don't know / no opinion / not relevant

Question 68.1 Please explain your answer to question 68:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not have a strong opinion, but we can accept that data is granted to e.g. ERSB. Any such permission should be subject to existing rules on information sharing, including that it be necessary for the execution of such institutions tasks.

Question 68.1 If yes, please specify which one:

- ESRB
- ECB
- NCBs
- National macro-prudential authorities
- Other

Please specify to which other relevant national and/or EU institutions the access to the AIFMD supervisory reporting data should be granted:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Question 68.2 Please explain your answer to question 68.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Question 69. Does the AIFMR template effectively capture links between financial institutions?

- Yes**
- No
- Don't know / no opinion / not relevant

Question 69.1 If not, what additional reporting should be required to better capture inter-linkages between AIFMs and other financial intermediaries?

Please provide your suggestion(s) providing information on the costs, benefits and disadvantages of each additional reporting:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 69.1 Please explain your answer to question 69:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 70. Should the fund classification under the AIFMR supervisory reporting template be improved to better identify the type of AIF?

- Yes
- No
- Don't know / no opinion / not relevant

Question 70.1 If yes, the AIF classification could be improved by:

Please select as many answers as you like

- permitting multiple choice of investment strategies in the AIFMR template
- adding additional investment strategies
- other
- it cannot be improved, however, if a portfolio breakdown is provided to the supervisors this can be inferred

Please explain why you think the AIF classification could be improved by permitting multiple choice of investment strategies in the AIFMR template, providing information, where available, on the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Please explain why you think the AIF classification could be improved by adding additional investment strategies, providing information, where available, on the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Investments in alternatives are increasing and new types of assets are seen. We suggest that the category "other" could be expanded in terms of sub categories such as crypto-assets.

Please explain by what other ways the AIF classification could be improved, providing information, where available, on the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Please explain why you think the AIF classification cannot be improved unless a portfolio breakdown is provided to the supervisors. Please provide information, where available, on the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given the opportunity to perform an individual “deep-dive” the current provisions are sufficient.

Question 70.1 Please explain your answer to question 70:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Question 71. What additional data fields should be added to the AIFMR supervisory reporting template to improve capturing risks to financial stability:

Please select as many answers as you like

- value at Risk (VaR)
- additional details used for calculating leverage
- additional details on the liquidity profile of the fund's portfolio
- details on initial margin and variation margin
- the geographical focus expressed in monetary values
- the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage
- liquidity risk management tools that are available to AIFMs
- data on non-EU master AIFs that are not marketed into the EU, but which have an EU feeder AIF or a non-EU feeder marketed into the EU if managed by the same AIFM
- the role of external credit ratings in investment mandates
- LEIs of all counterparties to provide detail on exposures
- sustainability-related data, in particular on exposure to climate and environmental risks, including physical and transition risks (e.g. shares of assets for which sustainability risks are assessed; types and magnitudes of risks; forward-looking, scenario-based data)
- other

Please explain why value at Risk (VaR) should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Should be available when VaR is applied, but not a requirement to apply VaR given the broad spectrum of AIFMs and AIFs (both in terms of size and complexity)

Please explain why additional details used for calculating leverage should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:

N/A

Please explain why additional details on the liquidity profile of the fund's portfolio should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The template should include additional details on the liquidity profile of the fund's portfolio to allow for a more granular reporting. This will allow better supervision.

Please explain why details on initial margin and variation margin should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:

N/A

Please explain why the geographical focus expressed in monetary values should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:

N/A

Please explain why the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why data on non-EU master AIFs that are not marketed into the EU, but which have an EU feeder AIF or a non-EU feeder marketed into the EU if managed by the same AIFM should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why the role of external credit ratings in investment mandates should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why IEIs of all counterparties to provide detail on exposures should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why sustainability-related data, in particular on exposure to climate and environmental risks, including physical and transition risks should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain what other data fields should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Question 72. What additional data fields should be added to the AIFMR supervisory reporting template to better capture AIF's exposure to leveraged loans and CLO market?

Please explain your answer providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We have no suggestions for additional data field to better cover CLO.

Question 73. Should any data fields be deleted from the AIFMR supervisory reporting template?

- Yes
- No
- Don't know / no opinion / not relevant

Question 73.1 Please explain your answer to question 73, presenting the costs, benefits and disadvantages of each data field suggested for deletion:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not find that any data fields be deleted from the AIFMR supervisory reporting template. The reported data is necessary to ensure effective monitoring and ensure timely action if needed.

Question 74. Is the reporting frequency of the data required under Annex IV of the AIFMR appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 74.1 Please explain your answer to question 74, presenting the costs, benefits and disadvantages for a suggested change, if any:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We find that it would be beneficial if reporting frequency for large AIF were monthly rather than quarterly. While such an increase in frequency would result in some burden to AIFMs, but this is expected to be minimal as it is an adaptation of existing quarterly reporting requirements, i.e. it is not necessary to establish new systems, hire new personnel or similar.

Question 75. Which data fields should be included in a template requiring AIFMs to provide ad hoc information in accordance with Article 24(5) of the AIFMD during the period of the stressed market in a harmonised and proportionate way?

Please explain your answer presenting the costs, benefits and disadvantages of implementing the suggestions:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In its current form the Article 24(5) of the AIFMD leaves discretion to the Member States to allow for different scenarios. Setting a too standardized format may harm the effectiveness of the provision in addressing national specificities.

To ensure the effectiveness of the provision, a template should not be introduced.

Question 76. Should supervisory reporting for UCITS funds be introduced?

- Yes
- No
- Don't know / no opinion / not relevant

Question 76.1 Please explain your answer to question 78, also in terms of costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Today, supervisory reporting is regulated nationally. We believe that that the AIFMD review is an occasion to consider greater harmonisation of the UCITS and AIFMD frameworks. The European Commission should consider aligning the frameworks where appropriate, in particular as applying different requirements to management companies which manage both UCITS and AIFs creates additional burdens for the firms concerned and divergences in supervisory/regulatory outcomes.

However, we do not find the AIFMD-review is the correct place to go in depths in terms of supervisory reporting for UCITS. These discussion should be reserved for the UCITS directive.

Question 77. Should the supervisory reporting requirements for UCITS and AIFs be harmonised?

- Yes
- No
- Don't know / no opinion / not relevant

Question 77.1 Please explain your answer to question 79, also in terms of costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that that the AIFMD review is an occasion to consider greater harmonisation of the UCITS and AIFMD frameworks. The European Commission should consider aligning the frameworks where appropriate, in particular as applying different requirements to management companies which manage both UCITS and AIFs creates additional burdens for the firms concerned and divergences in supervisory/regulatory outcomes.

Question 78. Should the formats and definitions be harmonised with other reporting regimes (e.g. for derivatives and repos, that the AIF could report using a straightforward transformation of the data that they already have to report under EMIR or SFTR)?

- Yes
- No
- Don't know / no opinion / not relevant

Question 78.1 If yes, please explain your response indicating the benefits and disadvantages of a harmonisation of the format and definitions with other reporting regimes:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We support harmonizing reporting regimes where possible. Harmonization should streamline and simplify reporting for both AIFMs and NCAs, but it must also acknowledge the differences there might be.

c) leverage

Question 79. Are the leverage calculation methods – gross and commitment – as provided in AIFMR appropriate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
-

Fully disagree

Don't know / no opinion / not relevant

Question 79.1 Please explain your answer to question 79 in terms of the costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

AIFMD has two measures of leverage calculation, the gross notional exposure (GNE) method and the commitment method. Both are used for reporting purposes. For that matter the provisions are appropriate when taken the provisions in the AIFMR in to consideration.

IOSCO issued in December 2019 its recommendations for a framework assessing leverage in investment funds. IOSCO recommends a two-step approach for this framework. We believe that IOSCO recommendations give rise to a need to amend the current reporting of the gross method calculation in Article 7 of AIFMR to ensure alignment with the IOSCO framework.

Question 80. Should the leverage calculation methods for UCITS and AIFs be harmonised?

Yes

No

Don't know / no opinion / not relevant

Question 80.1 If yes, what leverage calculation methods should be chosen to be applied for both UCITS and AIFs?

Please explain your proposal, indicating the difficulties, costs and benefits of applying such methodology(ies) to both UCITS and AIFs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 80.1 Please explain your answer to question 80:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While we agree that the leverage calculation methods for UCITS and AIFs should be harmonized, there must be different leverage calculation methods available to deal with the differences between AIFs and UCITS.

Question 81. What is your assessment of the two-step approach as suggested by International Organisation of Securities Commissions ('IOSCO') in the [Framework Assessing Leverage in Investment Funds published in December 2019](#) to collect data on the asset by asset class to assess leverage in AIFs?

Please provide it, presenting costs, benefits and disadvantages of implementing the IOSCO approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see the answer to question 79.

Question 82. Should the leverage calculation metrics be harmonised at EU level?

- Yes**
- No
- Don't know / no opinion / not relevant

Question 82.1 Please explain your answer to question 82, presenting the costs, benefits and disadvantages of your chosen approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We agree that the leverage calculation metrics should be harmonised at EU level, but we find that this is best introduced through AIFMR or guidelines

Question 83. What additional measures may be required given the reported increase in CLO and leveraged loans in the financial system and the risks those may present to macro-prudential stability?

Please provide your suggestion(s) including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We have no suggestions for additional measures to better cover CLO.

Question 84. Are the current AIFMD rules permitting NCAs to cap the use of leverage appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 84.1 Please explain your answer to question 86, in terms of the costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is our understanding that the current AIFMD rules are appropriate

Question 85. Should the requirements for loan originating AIFs be harmonised at EU level?

- Yes
- No
- Don't know / no opinion / not relevant

Question 85.1 Please explain your answer to question 85:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To ensure the objectives of the AIFMD, we believe that any additional or specific requirements for loan originating AIFs should be harmonized at EU level.

Question 85.1 If yes, which of the following options would support this harmonisation:

Please select as many answers as you like

- limit interconnectedness with other financial intermediaries
- impose leverage limits
- impose additional organisational requirements for AIFMs
- allow only closed-ended AIFs to originate loans
- provide for certain safeguards to borrowers
- permit marketing only to professional investors
- impose diversification requirements
- impose concentration requirements
- other

Please explain why you think limiting interconnectedness with other financial intermediaries would support this harmonisation.

Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Please explain why you think imposing leverage limits would support this harmonisation.

Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A loan originating AIF will be nature be a risky investment, and only more risky if applied in the context of COVID-19. To handle and limit this risk, requirements on the maximum level of leverage is beneficial.

Please explain why you think imposing additional organisational requirements for AIFMs would support this harmonisation.

Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why you think allowing only closed-ended AIFs to originate loans would support this harmonisation.

Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The underlying asset in a loan originating AIF is by its nature illiquid. A set up as open-ended is therefore not suited for these types of AIFs.

Please explain why you think providing for certain safeguards to borrowers would support this harmonisation.

Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Please explain why you think permitting marketing only to professional investors would support this harmonisation.

Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not see any reason for why loan originating AIFs should receive different treatments in terms of the investors for which these funds can be marketed towards. These funds can still be marketed towards retail investors if they have been granted authorization according to Article 43 in the AIFMD.

Please explain why you think imposing diversification requirements would support this harmonisation.

Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To limit the inherent risks of loan originating AIFs, loan originating AIFs should include requirements on diversification and concentration in the investment policy and ensure that investors are informed.

Please explain why you think imposing concentration requirements would support this harmonisation.

Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To limit the inherent risks of loan originating AIFs, loan originating AIFs should include requirements on diversification and concentration in the investment policy and ensure that investors are informed.

Please explain what other option would support this harmonisation.

Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:

N/A

V. Investing in private companies

The AIFMD rules regulating investing in private companies aim to increase transparency and accountability of collective investment funds holding controlling stakes in non-listed companies. This section seeks insights whether these provisions are delivering on the stated objectives and whether there are other ways to achieve those objectives more efficiently and effectively. Private equity industry has been growing for years from a few boutique firms to € 3,7 T global industry. The questions are raised therefore whether the AIFMD contains all the relevant regulatory elements that are fit for purpose.

Question 86. Are the rules provided in Section 2 of Chapter 5 of the AIFMD laying down the obligations for AIFMs managing AIFs, which acquire control of non-listed companies and issuers, adequate, proportionate and effective in enhancing transparency regarding the employees of the portfolio company and the AIF investors?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 86.1 Please explain your answer to question 86, providing concrete examples and data, where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 87. Are the AIFMD rules provided in Section 2 of Chapter 5 of the AIFMD whereby the AIFM of an AIF, which acquires control over a non-listed company, is required to provide the NCA of its home Member State with information on the financing of the acquisition necessary, adequate and proportionate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 87.1 Please explain your answer to question 87, providing concrete examples and data, where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 88. Are the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer necessary, effective and proportionate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree

- Don't know / no opinion / not relevant

Question 88.1 Please explain your answer to question 88, providing concrete examples and data, where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We find that the current provisions are sufficient to prevent assets stripping. The provisions can be clarified, but we see this as a matter for AIFMR or guidelines.

Question 89. How can the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer be improved?

Please provide your suggestion(s) including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The provisions on assets stripping could be improved by clarifications. By example, clarification on when an AIF has not used its best efforts to prevent distributions, capital reductions, share redemptions and/or the acquisition of own shares by the company would be welcome.

As pointed out in the answer to question 88, we find that clarifications are should be handled in the AIFMR or guidelines.

VI. Sustainability/ESG

Integrating sustainability factors in the portfolio selection and management has a double materiality perspective, in line with the [non-financial reporting directive \(2014/95\)](#) and the [European Commission's 2017 non-binding guidelines on non-financial](#). Financial materiality refers in a broad sense to the financial value and performance of an investment. In this context, sustainability risks refer to potential environmental, social or governance events or conditions that if occurring could cause a negative material impact on the value of the investment. For example, physical risks from the

consequences of climate change may concern a single investment/company, e.g. due to potential supply chain disruptions or scarcity of raw materials, and may concern welfare losses for the economy as a whole. Non-financial materiality, also known as environmental and social materiality, refers to the impacts of an investment/corporate activity on the environment and society (i.e. negative externalities). Still, there is also a financial dimension to non-financial materiality. Notably, so-called transition risks arise from an insufficient consideration for environmental materiality, for instance due to potential policy changes for mitigating climate change (e.g. to regulatory frameworks, incentive structures, carbon pricing), shifts of supply chains and end-demand, as well as stakeholder actions for mitigating climate change.

The [disclosure regulation 2019/2088](#) requires a significant part of the financial services market, including AIFMs, to integrate in their processes, including in their due diligence processes, assessment of all relevant sustainability risks that might have a material negative impact on the financial return of an investment or advice. However, at the moment AIFMs are not required to integrate the quantification of sustainability risks. Regulatory technical standards under the disclosure regulation 2019/2088 will specify principal adverse impacts to be quantified or described. This section seeks to gather input permitting better understand and assess the appropriateness of the AIFMD rules in assessing the sustainability risks.

Question 90. The [disclosure regulation 2019/2088](#) defines sustainability risks, and allows their disclosures either in quantitative or qualitative terms.

Should AIFMs only quantify such risks?

- Yes
- No
- Don't know / no opinion / not relevant

Question 90.1 Please substantiate your answer to question 90, also in terms of benefits, disadvantages and costs as well as in terms of available data:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

AIFMs should quantify and qualify all risks, including sustainability risks that can have a material negative impact on the financial return of an investment or advice.

Question 91. Should investment decision processes of any AIFM integrate the assessment of non-financial materiality, i.e. potential principal adverse sustainability impacts?

- Yes

- No
- Don't know / no opinion / not relevant

Question 91.1 Please substantiate your answer to question 91, also in terms of benefits, disadvantages and costs. Please make a distinction between adverse impacts and principal adverse impacts and consider those types of adverse impacts for which data and methodologies are available as well as those where the competence is nascent or evolving:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Whether an AIFM integrates the assessment of non-financial materiality, i.e. potential principal adverse sustainability impacts into the investment decision processes of AIFMs should be determined by the AIFM. Therefore, we do not find that such assessment should be a mandatory requirement.

If the AIF are marketed as a sustainable fund the AIFM should integrate the assessment of potential principal adverse sustainability impacts.

Question 92. Should the adverse impacts on sustainability factors be integrated in the quantification of sustainability risks (see the example in the introduction)?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 92.1 If you agree, please explain how and at which level the adverse impacts on sustainability factors should be integrated in the quantification of sustainability risks (AIFM or financial product level etc.).

Please explain your answer including concrete proposals, if any, and costs, advantages and disadvantages associated therewith. Please make a distinction between adverse impacts and principal adverse impacts and consider those types of adverse impacts for which data and methodologies are available as well as those where the competence is nascent or evolving

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

When relevant, adverse impacts on sustainability factors should be integrated in the quantification of sustainability risks, if such risks are relevant.

However, whether adverse impacts on sustainability factors should *always* be integrated in the quantification of sustainability risks is not to be determined within the AIFMD but in e.g. the disclosure regulation 2019/2088.

Question 92.1 Please explain your answer to question 92:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 93. Should AIFMs, when considering investment decisions, be required to take account of sustainability-related impacts beyond what is currently required by the EU law (such as environmental pollution and degradation, climate change, social impacts, human rights violations) alongside the interests and preferences of investors?

- Yes
- No
- No, ESMA's current competences and powers are sufficient
- Don't know / no opinion / not relevant

Question 93.1 If so, how should AIFMs be required to take account of the long-term sustainability and social impacts of their investment decisions?

Please explain.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 93.1 Please explain your answer to question 93:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Investors should be well informed by ensured transparency through disclosures in relation to the investment process and policy of the AIFMs.

AIFMs should, when considering investment decisions, be required to take account of sustainability-related impacts beyond what is currently required by the EU law *if* the investment strategy of the AIFM is labeled as sustainable by the AIFM or the AIF is marketed as such.

Question 94. The [EU Taxonomy Regulation 2020/852](#) provides a framework

for identifying economic activities that are in fact sustainable in order to establish a common understanding for market participants and prevent green-washing. To qualify as sustainable, an activity needs to make a substantial contribution to one of six environmental objectives, do no significant harm to any of the other five, and meet certain social minimum standards. In your view, should the EU Taxonomy play a role when AIFMs are making investment decisions, in particular regarding sustainability factors?

- Yes
- No
- Don't know / no opinion / not relevant

Question 94.1 Please explain your answer to question 94:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The EU Taxonomy should play a role when AIFMs are making investment decisions if the investment strategy of the AIFM is labeled as sustainable by the AIFM or the AIF is marketed as such.

Question 95. Should other sustainability-related requirements or international principles beyond those laid down in Regulation (EU) 2020/852 be considered by AIFMs when making investment decisions?

- Yes
- No
- Don't know / no opinion / not relevant

Question 95.1 Please explain your answer to question 95, describing sustainability-related requirements or international principles that you would propose to consider.

Please indicate, where possible, costs, advantages and disadvantages associated therewith:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see the answer to question 94.

VII. Miscellaneous

This section contains a few questions on the competences and powers of supervisory authorities. It also opens up the floor for any other comments of the stakeholders on the AIFMD related regulatory issues that are raised in the preceding sections. Respondents are invited to provide relevant data to support their remarks/proposals.

Question 96. Should ESMA be granted additional competences and powers beyond those already granted to them under the AIFMD?

Please select as many answers as you like

- entrusting ESMA with authorisation and supervision of all AIFMs
- entrusting ESMA with authorisation and supervision of non-EU AIFMs and AIFs
-

enhancing ESMA's powers in taking action against individual AIFMs and AIFs where their activities threaten integrity of the EU financial market or stability the financial system

- enhance ESMA's powers in getting information about national supervisory practices, including in relation to individual AIFM and AIFs
- no, there is no need to change competences and powers of ESMA
- other

Please explain why you think ESMA should be entrusted with authorisation and supervision of all AIFMs.

Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that there is no need to change the competences and powers ESMA. It is important that the AIFMD leaves the necessary discretion to Member States.

Please explain why you think ESMA should be entrusted with authorisation and supervision of non-EU AIFMs and AIFs.

Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why you think ESMA's powers should be enhanced in taking action against individual AIFMs and AIFs where their activities threaten integrity of the EU financial market or stability the financial system.

Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain why you think ESMA's powers should be enhanced in getting information about national supervisory practices, including in relation to individual AIMF and AIFs.

Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Please explain with what other additional competences and powers ESMA should be granted .

Please present costs, advantages and disadvantages associated with the chosen option. Concrete examples substantiating your answer are welcome:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Svar:
N/A

Question 97. Should NCAs be granted additional powers and competences beyond those already granted to them under the AIFMD?

- Yes
- No
- Don't know / no opinion / not relevant

Question 97.1 Please explain your answer to question 97, providing information, where available, on the costs and benefits, advantages and disadvantages of implementing your suggestion:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that the powers and competences granted by the AIFMD are sufficient.

However, as pointed out in ESMA letter of 18. August 2020 the AIFMD would benefit from further clarification of the power of Member States to apply additional requirements under their national law to sub-threshold AIFMs.

Question 98. Are the AIFMD provisions for the supervision of intra-EU cross-border entities effective?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 98.1 Please explain your answer to question 98, providing concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Experience shows that there is still a lack of clarity in what the precise responsibilities of home and host supervisors are in some cross-border marketing, management and delegation cases. Clarification of the supervisory responsibilities would reduce uncertainty regarding cross-border activities within the internal market and benefit the internal market.

This is also caused by AIFMs using branches and/or delegating a variety of functions to multiple third parties across different Member States (and non-EU jurisdictions), which gives added impetus to ensuring clear supervisory responsibilities and effective exchange of information among all relevant NCAs.

Some further legislative clarifications could therefore be provided regarding the supervision of cross-border activities of AIFs, their managers and delegates.

For example, in the case of AIF suspensions, there are general provisions in the AIFMD in relation to exchange of information. However, it would be useful to further clarify the supervisory responsibilities and obligations to share information with other NCAs and ESMA.

There is the need to further clarify the roles and responsibilities of home and host NCAs where AIFs are managed on a cross-border basis under Article 33 AIFMD.

Lastly, the supervision of branches would also benefit merit in further harmonisation. When an AIFM establishes a branch in order to offer products in a host jurisdiction, it is not clear what the roles of that AIFM's home and host NCAs are in some cases. It is also not clear what the procedure is for home and host NCAs when an AIFM wants to close a branch, nor is there a register of branches.

Question 99. What improvements to intra-EU cross-border supervisory cooperation would you suggest?

Please provide your answer presenting costs, advantages and disadvantages associated with the suggestions:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see the answer to question 98.

Question 100. Should the sanctioning regime under the AIFMD be changed?

- Yes
- No
- Don't know / no opinion / not relevant

Question 100.1 Please explain your answer to question 100, substantiating your answer in terms of costs/benefits/advantages, if possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Due to the differences between Member States, it is important that the AIFMD leaves discretion to Member States and respects their differences in structure and tradition.

Question 101. Should the UCITS and AIFM regulatory frameworks be merged into a single EU rulebook?

- Yes
- No
- Don't know / no opinion / not relevant

Question 101.1 Please explain your answer to question 101, in terms of costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We agree and see merits in further harmonization between the UCITS and AIFM regulatory frameworks, but we do not agree that the two frameworks should be merged.

While they are both collective investment undertakings, there are substantial differences between them. Most notable the UCITS directive is directed at both professional and retail investors, while AIFMD is directed at professional investors and therefore structurally have different focuses and protection goals.

To that end, UCITS hold a certain “brand” particularly based on the differences. Merging UCITS with AIFs would therefore be not be advisable.

Question 102. Are there other regulatory issues related to the proportionality, efficiency and effectiveness of the AIFMD legal framework?

Please detail your answer, substantiating your answer in terms of costs /benefits/advantages, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As already mentioned, we don't see a need to introduce a new investor category in the AIFMD. Retail investors have already today the opportunity to be classified as a professional investor if the retail investor meets two of the three criteria in Annex II, part B in MiFID-II. These criteria better align with a “semi-professional investor” thereby merit waiving some of the protections afforded these investors. If introduction of new categories of investors under the AIFMD is considered it has to be accompanied by appropriate investor protection rules.

Regarding Sub-thresholds AIFMs we find that the Commission should reconsider such category in the AIFMD. Today, these AIFMs are not regulated unless Member States have set out national regulation on sub-threshold AIFMs. This hinders a harmonized approach and a level playing field and it impair investor protection. To ensure a level playing field and to ensure investor protection, legislative amendments should ensure that these AIFMs are also regulated or at least subject to certain provisions of the AIFMD.

Lastly, the AIFMD would benefit from amendments to definitions of an AIF. Notwithstanding ESMA's guidelines on key concepts of the AIFMD, some residual uncertainties remain in the

AIFMD definitions that could be addressed to improve the clarity around the scope of AIFMD. It is difficult to explain structural and economic differences and to distinguish on a legally sound basis between vehicles that fall under AIFMD and those that do not. Moreover, making legal changes in the Level 1 framework confers a benefit for the day to day supervisory practice of the NCAs as well as an advantage in possible appeal proceedings.

The current definition is too vague and not specific enough and thus need to be specified more clearly, otherwise different national implementations will continue to lead to uncertainty and fragmentation across the Single Market. Specifically, we see merit in further defining 'AIFs' consistent with the ESMA guidelines on key concepts of the AIFMD which could be done by implementing a definition of (1) general commercial or industrial purpose in connection with real estate projects, (2) pooled return in general and (3) investment policy. We also see merit in specifying the distinction between holdings and private equity funds and clarifying the definition of a joint venture.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed